IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No. 457/2004.

Smt. Durgabai G. Bandodkar and others. ..... Petitioners.

V/s.

Shri Somnath A.S. Bandodkar and another. ..... Respondents.

Mr. A.D. Bhobe, Advocate for the petitioners.

Respondent No. 1 served - absent.

Ms. Kamaxi Sambari, Advocate for respondent No.2.

CORAM : A.P. LAVANDE, J.

DATE : 15TH APRIL, 2005.

P.C. :

Heard Mr. Bhobe, for the petitioners and Ms. Sambari, for respondents No.2. Respondent No.1 though served, is absent.

2. The petitioners have challenged order dated 21.8.2004, passed by the Civil Judge, Jr. Division, at Pernem in Regular Civil Suit No.24/2003, on application dated 3.8.2004, which was registered as Civil Misc. Application No. 84/2004, filed by the petitioners herein who are the defendants in the said suit. By the said application, the defendants

prayed that the suit may be kept sine die till the disposal of the tenancy case filed by the defendants.

3. Mr. Bhobe, learned Counsel appearing for the petitioners submitted that the issue of tenancy arises in the present proceedings and the trial Court ought to have referred the issue of tenancy to the Mamlatdar as required under the Goa, Daman and Diu Agricultural Tenancy Act, 1964. However, a bare perusal of the application reveals that no prayer was made by the defendants for referring the issue of tenancy and only prayer made was to keep the matter sine die till the disposal of the case filed by the defendants. That being the position, Mr. Bhobe, leaned Counsel appearing for the petitioners prays that the petitioners who are the defendants in the said suit be permitted to file appropriate application before the trial Court for referring the issue of tenancy to the Mamlatdar. The learned Counsel also prayed that the petitioners be permitted to withdraw the Civil Misc. Application No.84/04 dated 3.8.2004. Having regard to the peculiar facts of the case, the petitioners are permitted to withdraw the application dated 3.8.2004 and consequently, the impugned Order dated 21.8.2004 passed by the trial Court stands quashed and set aside.

4. Mr. Bhobe, learned Counsel appearing for the petitioners states that the petitioners who are the defendants in the said suit shall

file an application for referring the issue of tenancy before the trial Court within a period of one week from today. If such an application is filed by the defendants before the trial Court within a period of one week from today, the trial Court to decide the said application, after hearing the plaintiffs and not to proceed to record the evidence in the suit till such an application is decided.

The petition stands disposed of in the aforesaid terms.

Interim order dated 17.2.2005 stands vacated

A.P. LAVANDE, J.

ssm.